

Amendment # 1

This is an amendment to the contract/grant entered into by and between Indiana Department of Administration Division of Technology on behalf of All State Agencies (hereinafter referred to as "State") and SBC Ameritech, Inc. (hereinafter referred to as "Contractor" / "Grantee") dated August 6, 2001.

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

Some of the Emerald Call Accounting Products have been discontinued and replaced with new models that meet or exceed all original specifications. Please see **Attachment A** for the replacement model numbers and unit prices. The total system price has not changed.

Total amount of this action is \$0.00. Total remuneration of this contract is not to exceed \$2,000,000.00, or the total of all QPA Releases issued under this contract, whichever is greater.

All other matters previously agreed to and set forth in the original agreement and not affected by this amendment shall remain in full force and effect.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

In Witness Whereof, Contractor/Grantee and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract/grant do by their respective signatures dated below hereby agree to the terms thereof.

Contractor/Grantee:

By: Arthur E. Catcart
Printed Name: Arthur E. Catcart
Title: Sales mgr
Date: 4-23-03

State of Indiana Agency:

By: Sandra D. Armer
Printed Name: _____
Title: _____
Date: 5/13/03

Department of Administration

David Perlini
David Perlini, Commissioner
Date: 6/6/03

State Budget Agency

Daniel C. Stuckey For
Marilyn F. Schultz, Director
Date: 6/19/2003

Office of the Attorney General

Stephen Carter
Stephen Carter, Attorney General
Date: 7/2/03

- * IC 4-13-2-14.1 and IC 5-22-8 authorize certain contracts to be entered into without the signature of the State Budget Director. See State Budget Agency Financial Circular Number 94-3 and Financial Management Circular 98-2 for applicability of signature requirement. If the contract is not of the type exempt from review, the document must be submitted to the State Budget Director for review and approval.
- ** 10 (IAC) 2-3-1 authorizes certain contracts to be entered into without individual submission to the Attorney General. If the contract is not of the type exempt from review, the document must be submitted to the Attorney General for review and approval.

Catalog Number	Description	Old MFG	New MFG	Old Part #	New Part #	Price
3.8.1.2	Emerald Call Acctg-50 Extensions	Veramark		ECW39EDA		\$1,292.50
3.8.1.2b	Item is replaced with eCAS base 50		Veramark		ECAS50	\$1,292.50
3.8.1.14	Upgrade from model 50 to 100	Veramark		90S000348		\$543.75
3.8.1.14b	Upgrade from model eCAS 50 to 100		Veramark		ECASMU50	\$543.75
3.8.1.5	Upgrade from Model 100 to 200	Veramark		90S000309		\$635.00
3.8.1.5b	Upgrade from Model eCAS 100 to 200		Veramark		ECASMU50b	\$635.00
3.8.1.22	Installation & Training Service-1 day (All)	Veramark	Veramark	E-TSS1	E-TSS1	\$1,993.75
	The above includes the advanced database preparation and load					



April 17, 2003

Mr. Adam Benjamin
State of Indiana DoIT
Department of Administration
Division of Information Technology
Communication Services
Indiana Government Center North
100 North Senate Ave., Room N551
Indianapolis, Indiana 46204

Dear Alan,

Please find below changes to our QPA catalog. Veramark has changed the Emerald to eCAS. This does not change the price for the QPA. It does change the part numbers on the following items

Call Accounting System Software & Hardware

	Description	Mfg.	Part #	Price
3.8.1.2	Emerald Call Acctg-50 Extensions	Veramark	ECW39EDA	\$1,292.50
3.8.1.2b	Item is replaced with eCAS base 50	Veramark	ECAS50	\$1,292.50
3.8.1.14	Upgrade from Model 50 to 100	Veramark	90S000348	\$543.75
3.8.1.14b	Upgrade from Model eCAS 50 to 100	Veramark	ECASMU50	\$543.75
3.8.1.15	Upgrade from Model 100 to 200	Veramark	90S000309	\$635.00
3.8.1.15b	Upgrade from Model eCAS 100 to 200	Veramark	ECASMU50b	\$635.00
3.8.1.22	Installation & Training Service-1 Day(All) The above includes the Advanced Database Preparation & Load	Veramark	E-TSS1	\$1,993.75

Please let me know what else you may need from SBC on this.

Cordially,

Dane Newman
Voice Specialist
SBC
317-488-2424

<u>Contract</u>	0000000000000000000000009261	<u>Description</u>	C52-2-204
<u>Begin Date</u>	7/1/2001	<u>End Date</u>	6/30/2005
<u>Contract For</u>	IDOA DoIT	<u>Vendor GMIS ID</u>	0000056464
<u>Federal ID</u>	363264367		
<u>Contact Name</u>	Amy Ziegert		

Ordering Addr BUSINESS COMMUNICATIONS
ATTN: AMY ZIEGERT, RM. 1111
240 NORTH MERIDIAN STREET
INDIANAPOLIS IN 46204

<u>Phone</u>	317-488-3083	<u>Fax</u>	317-951-0021
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Remitting Address (if Different) BUSINESS COMMUNICATIONS
P.O. BOX 1838
SAGINAW IN 48605 1838

Comments (if any)

QPA can be mutually renewed for a period, or set of periods, not to exceed four additional consecutive years..
CONTACT:

Amy Ziegert
Ph: 317-488-3083
~~FX: 317-951-0021~~

CATALOG PRICING AVAILABLE FROM THE IDOA PROCUREMENT DIVISION AT
LSHARP@IDOA.STATE.IN.US OR 317-233-3901.
End of Comments

<u>Line</u>	<u>PS Item Number</u>	<u>Long Descr</u>	<u>UOM</u>	<u>Base Price</u>
1	000000000100005369	Private Branch Exchange/Video/Call Actg Sys and structured cabling systems per fully executed contract and catalog award initiated by RFP. CATALOG PRICING AVAILABLE FROM THE IDOA PROCUREMENT DIVISION AT LSHARP@IDOA.STATE.IN.US OR 317-233- 3901.	SVR	0.00

**EXECUTIVE DOCUMENT SUMMARY**

State Form 41221 (R4 / 10-97)

Instructions for completing the EDS and the contract process:

1. Please read the guidelines on the back of this form before preparing EDS.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Check EDS information against contract data for consistency.
6. Attach additional pages if necessary.

1. CONTRACTS / LEASING		2. PROCUREMENT		
<input type="checkbox"/> Professional Services Contract	<input checked="" type="checkbox"/> QPA	<input type="checkbox"/> QPA Release		
<input type="checkbox"/> Grant	<input type="checkbox"/> Special Procurement	<input type="checkbox"/> Equipment Lease		
<input type="checkbox"/> Lease (real estate)	<input type="checkbox"/> Lease-to-Own	<input type="checkbox"/> Contract for Services Maintenance		
<input type="checkbox"/> Attorney	<input type="checkbox"/> License Agreement	<input type="checkbox"/> Other (specify) _____		
<input type="checkbox"/> Other (specify) _____	<input type="checkbox"/> Amendment / Renewal _____			
<input type="checkbox"/> Amendment / Renewal				
3. Agency's EDS number C52-2-204		4. Agency's requisition number C52-2-204		
FISCAL INFORMATION				
5. Account number 5220-537000-106500		6. Account name DP ROTARY		
7. Total amount of this EDS action \$ 0.00		8. New contract total		
9. New total amount for each fiscal year				
Year 2001		Year 2003 \$		
Year 2002 \$		Year \$		
10. TIME PERIOD COVERED IN THIS EDS				
FROM: (month, day, year) July 1, 2001		TO: (month, day, year) June 30, 2005		

33. Description of work

This contract is for SBC/Ameritech to provide Private Branch Exchange (PBX), Video, Call Accounting Systems and Structured Cabling Systems to the State of Indiana. This is a zero based QPA. Each agency will order off it, through DoIT. Agencies will be billed directly from Ameritech/SBC.

34. Justification for spending money, justification of vendor selection, and determination of price reasonableness. See also Box #24.

A RFP was released in late 1999 for solicitation for Telephone System and associated peripheral equipment. Ameritech won 4 parts of the RFP. Wiring, Video, PBX and Call Accounting Systems. The Respondents to the RFP were scored on many categories. Some of which being, price, overall management judgement, technical specifications, quality of proposed approach. Agencies will work through DoIT to order off of this QPA.

JUN 25 2001

87165
Return to Agency
DCS

JUL 10 2001

87579

Received

JUN 25 2001

JM

IDOA Contracts

11. Name of state agency / division / subdivision DoIT/IDOA		12. Date prepared 5/04/2001 RECEIVED	
13. Address 100 N. SENATE AVE., IGCN, RM N551 INDIANAPOLIS, IN 46204 JUN 13 2001			
14. Name of courier Jane Vehling		15. Telephone number 232-0886 DPOC	
16. Name of contract writer G. Douglas Seidman		17. Telephone number 232-3175	
18. Name of individual requesting contract Same		19. Telephone number Same	
20. For federal contracts - woman owned vendor? <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> Yes		21. Taxes withheld by Auditor? <input type="checkbox"/> Yes	
22. Is there renewal option language in document? <input checked="" type="checkbox"/> Yes		23. If Yes, maximum number of years 4	
24. Minority participation? <input type="checkbox"/> NO If No, and if contract >=\$25,000 must include justification in #34.		25. If Yes, list percentage %	
26. Will the attached document involve data processing or telecommunications systems(s)? <input checked="" type="checkbox"/> Yes: DPOC or Delegate has signed off on contract <input type="checkbox"/> Possibly: This issue has been discussed with DPOC or Delegate			
27. Statutory authority [cite applicable Indiana or federal code(s)] Indiana Code 5-22-6-1 et seq.			
28. Method of source selection <input type="checkbox"/> Negotiated <input type="checkbox"/> BAA # _____ <input type="checkbox"/> RFP# C52-0-006 _____ <input type="checkbox"/> Bid / Quotation <input type="checkbox"/> Emergency Special Procurement <input type="checkbox"/> Other (specify) _____			
29. Name of contractor Ameritech/SBC			
30. Address of contractor Ameritech/SBC 240 N. Meridian Street Indianapolis, IN 46204			
31. Is vendor registered with the Secretary of State? <input checked="" type="checkbox"/> Yes			
32. Taxpayer Identification number 36-3264367			
33. Description of work This contract is for SBC/Ameritech to provide Private Branch Exchange (PBX), Video, Call Accounting Systems and Structured Cabling Systems to the State of Indiana. This is a zero based QPA. Each agency will order off it, through DoIT. Agencies will be billed directly from Ameritech/SBC.			
34. Justification for spending money, justification of vendor selection, and determination of price reasonableness. See also Box #24. A RFP was released in late 1999 for solicitation for Telephone System and associated peripheral equipment. Ameritech won 4 parts of the RFP. Wiring, Video, PBX and Call Accounting Systems. The Respondents to the RFP were scored on many categories. Some of which being, price, overall management judgement, technical specifications, quality of proposed approach. Agencies will work through DoIT to order off of this QPA.			
35. Agency fiscal officer or representative approval		36. Date approved	
39. Attorney General's Office approval swg		40. Date approved 8-6-01	
37. Budget agency approval		41. Agency representative receiving from AG	
38. Date approved		42. Date received	

RFP C52-0-006
APPENDIX 2

CONTRACT FOR
PBX , AND VIDEO SYSTEMS, STRUCTURED CABLING SYSTEMS, CALL
ACCOUNTING SYSTEMS DISTRIBUTION SYSTEMS
QUANTITY PURCHASE AWARD FOR
THE INDIANA DEPARTMENT OF ADMINISTRATION
DIVISION OF INFORMATION TECHNOLOGY

WITNESSETH:

WHEREAS, the State of Indiana, Department of Administration (Hereinafter "IDOA"), Procurement Division, on behalf of the Division of Information Technology (hereinafter "DOIT" or "State"), did on the day of October 26, 1999, issue an Request for Proposal #52-0-006 (Hereinafter "RFP") soliciting proposals to establish a contract for the provision of PBX Telephone Systems (Hereinafter "PBX"), Call Accounting Systems (Hereinafter "CAS"), Structured Cabling Systems (Hereinafter "SCS"), Video Distribution Systems (Hereinafter "VDS") and associated peripheral equipment to and for state agencies; and,

WHEREAS ,Business Communications Services, a division of SBC Global Services, Inc., formerly known as Ameritech Information Systems, Inc., ("Contractor" or "Ameritech") and Ameritech Credit Corporation ("Lessor") responded to said RFP by submitting a Proposal dated January 28, 2000, and,

WHEREAS, Contractor's Proposal has been selected as the Proposal best meeting the RFP requirements and as one providing a viable, cost effective solution for the State, and,

WHEREAS, the State wishes to structure the Contract with Contractor for the sale and installation of the Systems described in the RFP Response, together with ongoing warranty support for the Systems (maintenance services shall be selected at the discretion of the State on an individual System basis),

WHEREAS, the State wishes also to establish a Quantity Purchase Agreement ("QPA") for products offered as part of Contractor's Catalog, and wishes to allow DOIT to secure related components, other systems, and related services via procedures for QPA Orders ("Quantity Purchase Agreement Releases" or "QPARs"); and,

WHEREAS, Contractor is willing to deliver the System, provide such support and warranty services, and to deliver such additional hardware, software, systems, and services;

NOW, THEREFORE, the above-named parties enter into this Contract upon the following terms and conditions:

This contract, entered into by and between Indiana Department of Administration – Division of Information Technology (hereinafter referred to as "State") and Business Communications Systems a division of SBC Globla Services, Inc., on behalf of itself (hereinafter referred to as "Contractor") and Ameritech Credit Corporation d/b/a SBC Capital Services (hereinafter referred to as "Lessor") and is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION A

CONTRACT ROLE, RELATIONSHIP AND PERFORMANCE

1.0 Parties

This Contract for the PBX system(s) and additional related hardware, software and services ("Contract") is entered into by and between Business Communications Systems a division of SBC Globla Services, Inc., on behalf of itself (hereinafter referred to as "Contractor") and Ameritech Credit Corporation d/b/a SBC Capital Services (hereinafter referred to as "Lessor") ("Contractor") with a place of business at 240 N. Meridian Street, Indianapolis, IN46204, and the State of Indiana, through the Department of Administration, Division of Information Technology, with offices at Indiana Government Center North, RM N551, 100 N. Senate Avenue, Indianapolis, IN 46204 ("State").

2.0 Definitions

- 2.1 The Proposal - Business Communications Systems a division of SBC Global Services, Inc. (Contractor's) response to the RFP, attached hereto and incorporated as part of this contract, together with Contractor's Response, to the Request for Clarification from the State, and Contractor's Response to Telephone Questions. The RFP is attached hereto..
- 2.2 System - the system described in the RFP and the RFP Response comprises all hardware and software needed for the proper functioning of the System in accordance with the System Specifications, together with any add-on components, both hardware and software.
- 2.3 System Specifications - those specifications regarding the System and related services contained in the RFP, (except where Contractor took specific exception to a specification) together with the representations regarding the System and related services contained in the Proposal.
- 2.4 Software - the Contractor-branded software programs designated as Contractor's software programs, together with applicable operator manual(s), and future updates to the same. The Software is that which is owned by Contractor and/or its supplier(s) for use with purchased System(s) and is licensed by Contractor and/or its supplier(s). Software does not include Off-the-Shelf Software.
- 2.5 This item not used.
- 2.6 Proprietary Hardware - the Contractor-branded, proprietary hardware being provided as part of the System, together with applicable operator manual(s), and future updates to the same.
- 2.7 This item not used.
- 2.8 Catalog - the attached "Price Guide", incorporated herein by reference..
- 2.9 The State of Indiana Enterprise- Indiana state, county and local governmental agencies, authorities, commissions, other governmental entities, and school corporations.
- 2.10 Designated systems: the system(s) as specified and responded to in the RFP, but not limited thereto.

3.0 Delivery of Turnkey System(s) and Related Support Services

In this contract the Contractor agrees to sell the System defined in the System Specifications and to deliver and install the same within the period and according to the schedules set out in this contract and attached RFP Response. Subject to Customer's obligations, both implied and expressly set forth hereunder, the System will be installed by Contractor, be fully functional, and

will comply with the manufacturer's System Specifications. Contractor will also provide the services outlined in the System Specifications. As part of this Contract, Contractor also:

- 3.1 Licenses the Software to the State in accordance with the "Software License Term and Conditions", Section C, below;
- 3.2 This item not used.
- 3.3 Will provide warranty service for the System in accordance with the provisions of this Contract, particularly Sections 8 and 13, below and,
- 3.4 Will provide other services as defined in this Contract and the System Specifications.

4.0 Consideration

- 4.1 **The System.** The Contractor will be paid the total price of the QPA Release as total remuneration under this Contract for all services performed and for all deliverables under the Statement of Work, except as expressly stated elsewhere in this Contract. This is a fixed bid price to carry out the Statement of Work, and to deliver the System, in accordance with the System Specifications, and to perform the other services as specified in the RFP and the Proposal. Actual payment due dates are governed by the Acceptance Date of the project.
 - 4.1.1 The System price quoted shall be for a one-time purchase of a fully-operational system meeting the System Specifications, and shall include all freight, shipping, handling, transportation, insurance, delivery, hardware, software, supplies, installation, standard commercial packaging and any other charges.
 - 4.1.2 The System price is the total for meeting the entire specification as defined herein, and no additional charge may be requested later except for changes as stated in Paragraph 32.0 of this Agreement (changes which are requested by the State which add to the System Price).
 - 4.1.3 Invoicing for payment for the System shall not be submitted until the State has certified a milestone has been met. Payment shall be made in accordance with Paragraph 6, "Payment."
- 4.2 **Product Orders.** In consideration of the terms and conditions contained herein, and the receipt of applicable fees, Contractor agrees to sell the hardware products, license the software programs, and to deliver the services listed in the Contractor's most recently published Catalog at the agreed upon rates upon execution of a State Requisition, QPA Release, or Purchase Order by DOIT that is in accordance with the provisions of the Contract. A State Requisition, QPA Release, or Purchase Order by DOIT that contains any terms and conditions that are not in accordance with the provisions of this Contract shall not be valid. The parties agree that the Contractor will pass on any additional discounts as obtained from the product manufacturer due to the volume of products ordered at a given time. The products and services listed in the Catalog are inclusive of the warranties expressly set forth in this Contract.

5.0 Term

This Contract shall commence upon execution by Contractor and all the representatives of the state of Indiana as required under law to enter into this Contract. The Contract term shall be four (4) consecutive calendar years. The term shall end at midnight EST of the same month and same day four (4) years following Contract execution, unless terminated as provided, below. The parties shall have the option to extend this Contract by mutual written agreement for a period, or set of periods, not to exceed four (4) consecutive calendar years thirty days prior to the expiration date. The term of the renewed contract may not be longer than the term of the original contract (IC 5-22-17-4).

The QPA Release will be effective only upon receipt of a Notice to Proceed in addition to an encumbered QPA Release from the Auditor of the State. QPA Releases will either be for a purchase of a system or for a lease to own term of 24, 36, or 48 months as indicated on the QPA Release through Lessor.

6.0 Payment

Contractor may issue its invoice for the State on the installed System(s) upon the acceptance date.

Payment will be made by the State net thirty-five (35) calendar days following the invoice date of the Contractor's properly prepared invoice and claim voucher or other state procurement forms. All payment obligations are subject to the encumbrance of monies and shall be made in arrears in accordance with Indiana law and State fiscal policies and procedures. Invoicing shall be sent to the agency ordering the system. The billing address will appear on the QPA Release Form. On any system ordered by DoIT the invoice shall be forwarded to the following address:

Division of Information Technology
Indiana Government Center North, RM N551,
100 N. Senate Avenue, Indianapolis, IN 46204
Attn: Fiscal Officer

7.0 Travel Expense

There shall be no charge for travel, lodging, or out-of-pocket expenses of any kind incurred by Contractor in connection with providing services under this Contract, unless such charges are specified by Contractor as additional to the stated Catalogue or Contract price for additional services as requested by the State. The State will only be responsible for travel, living, and out of pocket expenses actually incurred by Contractor in performing the Contract. Further, the State will only reimburse such actual expenses up to the amount granted to state employees under State law, fiscal policy and procedures for travel as stated in State Budget Agency Financial Management Circular #97-1. In order to receive reimbursement for expenses, Contractor must submit an itemized list of actual expenses and copies of receipts matching the claimed expenses. Failure to submit itemized expenses and matching receipts will result in nonpayment for expenses.

SECTION B

TERMS AND CONDITIONS OF SALE

8.0 Warranty of Sale

Contractor warrants that the State or Lessor, as the case may be, will acquire good clear title to the System being purchased hereunder at the time of final payment, free and clear of all liens and encumbrances.

9.0 Loss or Damage/Orders/Cancellation/Shipping

9.1 Contractor expressly agrees to relieve the State, its officers, agents and employees from any and all responsibility for all risks of loss and damage to the product(s) pending delivery to the State. Contractor shall also be responsible for any loss or damage (subject to the liability provisions of this Contract) due to a malfunctioning or defective product during the Warranty Period as stated in paragraph 13.0 (Warranty Commitment), provided that the malfunction or defect was not proximately caused by any wrongful act or omission by the State (including negligence). Following System delivery and prior to the System Acceptance, the risk of loss shall be shared by the Contractor and the State in proportion to the loss or damage attributable to the intentional and negligent act or omission or each party. Force Majeure events causing loss or damage to the System shall be borne by the State. Acts of third parties causing loss or damage to the System shall be borne by the State unless it can be shown that the Contractor's act or omission contributed to the loss or damage.

9.2 The State does not have the right to cancel the purchase of the items being ordered under this Contract after ten (10) days after the confirmed order to the Manufacturer, except as specified elsewhere in this Contract.

9.3 Shipment will be made in accordance with the Scheduled Delivery Date specified in the State's Requisition, QPA Release, or Purchase Order, whichever is applicable. In the absence of specific shipping instructions from the State, Contractor will ship by the method it deems most advantageous to both parties. Equipment will be packaged in Contractor's standard commercial packaging. If special packaging is requested, these additional packaging costs will be invoiced to the State.

10.0 Delivery Terms

10.1 Prior to the acceptance of the System, any System or component thereof which does not perform in any material respect to the Contractor's published functional specifications may be returned to the Contractor. The Contractor shall be responsible for all arrangements of such return, as well as the entire cost and liability (subject to the liability provisions of this Contract) associated with any such item(s) returned.

10.2 The Contractor shall be responsible for any and all calculations and/or miscalculations resulting from any site survey or research conducted by the Contractor, and all liabilities arising therefrom shall be subject to the liability provisions of this Contract.

10.3 The System components delivered shall be those specified in the Contractor's response and not substituted items, unless approved in advance, in writing, by the State, but only if the replacement items meet or exceed the specifications herein, and the price for the substituted item is at or below the price quoted.

10.4 All equipment must be newly manufactured, except that parts used in warranty may be re-manufactured to "like new" performance.

10.5 The System shall be fully delivered in accordance with the attached Milestone Schedule. Failure to make timely or proper delivery shall entitle the State to terminate

the purchase order via written letter to the Contractor, and allow the State to utilize the available remedies at law or in equity (subject to the liability provisions of this Contract).

10.6 All equipment and materials must comply with FCC Regulations, be UL approved, and meet or exceed the 1999 National Electric Code, EIA/TIA 568A, and State of Indiana Published Standards and Specifications.

10.7 Delivery of the System shall be made F.O.B. Destination Point to the address specified in the purchase order.

10.8 The System shall be delivered with all appropriate installation, operator, user and problem resolution manuals, as well as, any other materials, cable, supplies or other items normally shipped to make the system fully operational in good working order.

10.9 The Contractor may be declared in breach of this Contract with respect to the purchase order in question, not the Contract as a whole for delivering the System or a component thereof that does not perform in any material respect to the manufacturer's published functional specifications, upon thirty (30) days prior written notification by the State and failure of Contractor to rectify the situation in question in a commercially reasonable timeframe. Any additional costs required to make the System compliant with the specifications shall be fully borne by the Contractor, without additional charge to the State (subject to the liability provisions of this Contract). The foregoing provisions shall not apply to the Contractor if the System's failure (or component thereof) to meet the specifications is due to the State's improper use and service in applications for which the System was intended, and for damage caused by material abuse, misuse, unauthorized alteration, or neglect, or repair or installation by any personnel not authorized to provide such services, or by use or attempted use of software or hardware other than that which has been designated by the Contractor as compatible with the System in Contractor's documentation to the applicable Proprietary Hardware or Software, or to the System. Nothing in this Section 10 shall prevent the State from having the ability to obtain at any time products or services for the System from a third party provider in the furtherance of the State's competitive procurement policies and procedures as long as such products are compatible with the System per the Contractor's published System documentation. However, Contractor will not provide any warranty on said products or services, and if said products and services are installed on a Contractor System during Contractor's Warranty Period, the Warranty provided by Contractor is null and void.

11.0 Installation Terms

11.1 Warranty. The Contractor shall install the System and all its components (including without limitation, associated hardware and software), furnishing all the tools, supplies and labor, such that the job is performed in a professional, good and workmanlike manner consistent with manufacturer and industry standards, such that the System operates in good working order in accordance with the Proposal, and the Statement of Work.

11.2 Installation services shall be provided at times mutually agreed to by Contractor and the State, and in accordance with the Milestone Schedule.

11.3 Contractor's responsibilities in the installation shall include, without limitation (and in accordance with Contractor's response the State's RFP):

11.3.1 The physical setup and configuration of hardware systems;

11.3.2 The configuration of the operating system;

11.3.3 The installation of the application software;

11.3.4 The delivery of services outlined in the System Specifications;

11.3.5 The provision of a fully operational system that complies with the Systems Specifications.

12.0 Acceptance

- 12.1 Upon notification to the State by the Contractor that Installation is complete and certification that the System is in good working order, the Acceptance period shall begin. Contractor shall abide by the requirements for Systems Acceptance outlined in the RFP except as modified by the RFP Response. The Contractor shall notify the designated contact person in writing when the System is fully installed and certified as being in good working order. If there is no response by the State within forty-five (45) days, Contractor shall notify the State that the State has ten (10) days to accept or reject the System. If the State fails to reject the System during that ten (10) day period, the System will be deemed accepted by the State.
- 12.2 The State shall operate and review the functionality of the System, and perform the other reviews anticipated as part of the System Acceptance Protocol outlined in the RFP Response as modified. If there is a non-conformity with the manufacturer's specifications, the State may in writing reject, in whole or in part, the System, or allow the Contractor a reasonable opportunity to promptly cure the defect within a stated time period and permit a restart of the acceptance period.
- 12.3 The State always retains the right to reject the System for failing to meet the initial acceptance period regardless of whether a restart period has been granted.
- 12.4 Any System rejected by the State shall be removed by the Contractor at the Contractor's sole expense and liability (subject to the liability provisions of this Contract) in accordance with the System Acceptance Protocol.

13.0 Warranty Commitment

Except as stated in Paragraph 17.5 (Software Warranty) For a period of twenty-four (24) months (or such other period as specified by Contractor in this Agreement hereunder) beginning sixty (60) days from date of system cutover (on a system which is phased in, the system cutover shall be the date the initial system cutover), the System shall be warranted as follows:

- 13.1 **Guarantee of Compatibility** - When the Contractor claims to be compatible with any of the System Specifications and standards listed herein, such compatibility becomes the responsibility of the Contractor. If at any time prior to acceptance, it is shown that the supplied system is not compatible in any material respect with the specifications or standards in question, and that the lack of compatibility is adversely affecting the system performance, the Contractor must either repair or replace, at the Contractor's sole option and own expense, whatever components of the System are necessary in order to bring the System into compliance with the System Specification or standard.
- 13.2 The Contractor warrants the System against all defects in material and workmanship and warrants that the System shall conform in all material respects to the manufacturer's specifications. During the Warranty Period, should the System become defective, the Contractor shall either replace the System or repair the System at Contractor's option.
- 13.3 Warranty shall be provided Monday through Friday, 8:00 a.m. to 5:00 p.m. Indianapolis time, excluding weekends and holidays observed by Contractor.
- 13.4 Warranty services shall be available to the State at times and on days other than stated above, and will be provided at rates established in the Pricing Schedule.
- 13.5 Contractor must provide onsite (at the system location) warranty services, which includes all labor and parts furnished on a routine, scheduled basis to keep the System in good operating condition as recommended by the System manufacturer. The warranty services will be scheduled with DOIT, and shall include all inspection, diagnostics, cleaning, adjustments and engineering changes.
- 13.6 This paragraph is not used.

- 13.7 Contractor shall provide telephone support for warranty services of any proposed system 24 hours per day, 7 days per week, 365 days per year. Contractor must respond to telephone service calls within two (2) hours of notification of problem.
- 13.8 Contractor shall commence warranty services from a remote location or be on site (at Contractor's option) for major equipment (hardware or software) failure within a response time of two (2) hours. Major equipment/software failure is any situation in which the State requests warranty service and in which the State's operation of the System according to the Contractor's published specifications is affected such that more than 20% of the trunks or more than 20% of the Specific Installation's Telephone sets or Central Office Trunks are not working normally, or substantial failure of the voice processing subsystem or call attendant console or system failure. The State may request to escalate a non-major failure (i.e. failure that does not meet the foregoing criteria for a major failure) to a "major" failure subject to the aforementioned two (2) hour response time to provide warranty services, based on (i) the availability of Contractor's work force and (ii) the State pays any applicable labor charges.
- 13.9 Contractor shall provide warranty services, if necessary, by the end of the next business day for minor equipment/software failure. Minor equipment/software failure is any failure less than that described as a major equipment/software failure.
- 13.10 If the problem is not corrected within one (1) business day after notification of system malfunction, the provider shall advise the State in writing why the problem has not been corrected and anticipated time of resolution.
- 13.11 This paragraph is not used.
- 13.12 All calls to the LEC regarding the System must be routed through, or originate from, the State and the State shall pay all charges. Contractor will be responsible for paying all charges for calls made to the LEC that were not routed through, or did not originate from, the State.
- 13.13 Contractor must provide all materials, tools, documentation, diagnostics, and testing devices as is reasonably necessary to provide the warranty services of the System.
- 13.14 While Contractor's on-site support service personnel may be more than 60 mile from the Facility address stated above, Contractor agrees to bill the State for no more than two (2) hours travel time. All other Facilities, current and future, shall not be subject to the provisions of this Sub-Section 13. unless the Contractor agrees by subsequent written instrument that this Sub-Section will apply.
- 13.15 Contractor must provide overnight shipment of the System or replacement parts in the event parts are not in stock; however, the State shall not be charged any shipment, handling, mailing or any other costs since the Contractor is responsible for maintaining an adequate warranty supply inventory nor does this provision imply a waiver of the Contractor's response time guarantee above.
- 13.16 If warranty services on a particular service issue continues for a period longer than seven (7) calendar days, the Contractor may, if necessary, provide the State with equivalent replacement equipment and/or parts.
- 13.17 Any equipment or parts replaced will be done so on an exchange basis. Replacement parts must be new or refurbished to "like new" condition.
- 13.18 As long as the System remains under warranty, the Contractor must provide software problem fixes and patches at no additional charge for all System software, provided that the additional fees for labor and for installation of such software for service provided outside of business hours are or may be charged to the State at prevailing contract rates depending on the time of the day and day of the week. Warranty service during Contractor's business hours shall be at no additional charge.

- 13.19 The Contractor will provide updated versions of software documentation for System software, as applicable.
- 13.20 All Contractor personnel shall be sufficiently qualified and adequately trained to perform any warranty services.
- 13.21 Nothing in this Contract shall prevent the State from having the ability to obtain at any time products or services for the System from a third party provider in the furtherance of the State's competitive procurement policies and procedures as long as such products are compatible with the System per the manufacturer's published System documentation and such services are to be delivered by an alternative service provider certified by the manufacturer in writing.
- 13.22 The Contractor shall actively and continuously perform as is commercially reasonable warranty services through the final successful remedy to the System malfunction.
- 13.23.1 The foregoing warranties are contingent upon the State's proper use and service in applications for which the System was intended and shall not apply to damage caused by material abuse, misuse, unauthorized alteration, or neglect, or repair or installation by any personnel not authorized to provide such services, or by the use or attempted use of software or hardware other than that which has been designated by the Contractor as compatible with the System in Contractor's documentation to the applicable Proprietary Hardware or Software, or to the System. Replacement of the System or any component thereof does not extend its warranty period beyond the original warranty expiration date. These warranties do not cover reconstruction of the State's configuration or other data files residing on the Proprietary Hardware, Software or the System that are rendered inoperable or inconsistent through the attachment of equipment not designated as compatible by Contractor in Contractor's documentation to the applicable Proprietary Hardware or Software, or to the System, or the application of the State's independently developed procedures not subject to Contractor's prior written approval, or software not designated as compatible by Contractor in Contractor's documentation to the applicable Proprietary Hardware or Software, or to the System. Nothing in this Contract shall prevent the State from having the ability to obtain at any time products or services for the System from a third party provider in the furtherance of the State's competitive procurement policies and procedures as long as such products are compatible with the System per the manufacturer's published System documentation and such services are to be delivered by an alternative service provider certified by the manufacturer in writing.
- 13.24 THE WARRANTIES EXPRESSLY SET FORTH HEREIN, AND AS EXPRESSLY SET FORTH ELSEWHERE IN THIS CONTRACT INCLUDING ALL ATTACHMENTS, ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SYSTEM, PROPRIETARY HARDWARE, SOFTWARE, SERVICES OR OTHER ITEMS PROVIDED HEREUNDER. THE CONTRACTOR AND THE LESSOR SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND (WITHOUT NEGATING THE REMEDIES PROVIDED UNDER SECTION 31(b)) AGAINST INFRINGEMENT.

SECTION C

SOFTWARE LICENSE TERMS AND CONDITIONS

- 14.0 Software Products Restrictions.** The State is granted a nontransferable (except as provided for in Paragraph 17.1), non-exclusive, perpetual license to use within the United States, for its internal State purposes only, and only in connection with the System, only the number of copies of such Software that are provided by Contractor. The State may not copy (except a reasonable number of copies for backup or archival purposes) such Software for any purpose without Contractor's prior written consent. The State may not remove such Software or attempt to execute such Software on equipment or system other than the System on which such Software was originally loaded, installed or mounted by Contractor. The State shall not, whether through the use of disassemblers or any other means, attempt to reverse engineer, decompile, disassemble, or derive any source code from such Software, nor shall the State permit any third party to do so. Any attempt to perform any of the foregoing shall be a material breach of this Contract and shall entitle Contractor to immediately exercise any remedy herein or available at law or in equity. If the State purchases the right to make and use additional copies of any Software, as evidenced by certificates provided by Contractor that specify an authorized number of users, all such copies will be subject to the license terms in this Section C, except that the authorized number of users or copies will be as stated in such certificates.

The provisions of this Section C shall survive the termination of this Contract. The terms and conditions of this license grant under this Contract shall govern subsequent license grants except where waived by mutual agreement in a signed writing by both parties.

- 15.0** The State may use the Software on the System and the State may transfer the System in whole within the State of Indiana enterprise to other State-owned sites. The State may also transfer the System in whole to the sites of third party contractors fulfilling internal State business purposes for the State which the State has outsourced, provided that use of the Software and the System by such third party contractors are restricted solely to such internal State business purposes performed by the third party contractor under an applicable outsource agreement between the State and the third party contractor. The State shall take all necessary actions to ensure this Contract will be binding upon such third party assignees.

- 16.0** Not Used

- 17.0** **Warranty**

Contractor warrants, represents and assures to the State as follows:

- 17.1 Ownership.** That Contractor has the right to grant, as an authorized Software dealer, to the State a license to use the same without violating any rights of any third party, and as of the effective date of this Contract there is no known suit by any third party based on an alleged violation of such right by Contractor.
- 17.2** This item not used.
- 17.3 Program Termination.** That the Software does not contain any disabling device capable of partially disabling or terminating use of the Software or a device monitoring use of the Software at any time.
- 17.4 Warranty Period for Software.** The Warranty Period for Software purchased under this Contract shall be the Warranty Period provided by the Software Developer.
- 17.5** The foregoing warranties are contingent upon the State's proper use and service in applications for which the Software was intended and shall not apply to damage caused by material abuse, misuse, unauthorized alteration, or neglect, or repair or installation by any personnel not authorized to provide such services, or by the use or attempted use of software or hardware other than that which has been designated by the Software

Developer. Replacement of the Software or any component thereof does not extend its warranty period beyond the original warranty expiration date. These warranties do not cover reconstruction of the State's configuration or other data files residing on the Proprietary Hardware, Software or the System that are rendered inoperable or inconsistent through the attachment of equipment not designated as compatible by Contractor in Contractor's documentation to the applicable Proprietary Hardware or Software, or to the System, or the application of the State's independently developed procedures not subject to Contractor's prior written approval, or software not designated as compatible by Contractor in Contractor's documentation to the applicable Proprietary Hardware or Software, or to the System. Nothing in this Section C shall prevent the State from having the ability to obtain at any time products or services for the Software from a third party provider in the furtherance of the State's competitive procurement policies and procedures as long as such products are compatible with the System per the Software Developer's published specifications.

17.6 This paragraph is not used.

17.7 THE WARRANTIES EXPRESSLY SET FORTH HEREIN, AND AS EXPRESSLY SET FORTH ELSEWHERE IN THIS CONTRACT, ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SYSTEM, PROPRIETARY HARDWARE, SOFTWARE, SERVICES OR OTHER ITEMS PROVIDED HEREUNDER. THE CONTRACTOR AND THE LESSOR SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND (WITHOUT NEGATING THE REMEDIES PROVIDED UNDER SECTION D) AGAINST INFRINGEMENT.

18.0 **Updates.** Contractor shall provide any Software and documentation updates, error corrections, modifications, enhancements, new releases and new versions (collectively 'Updates') when they are generally made available to other Customers at a price to be mutually agreed upon. Any Update shall become part of the Software and subject to the terms of this Contract. The Warranty Period of the Update shall be the longer of the expiration of warranty period of the system for which said Update is purchased or the warranty period provided by the Software Developer.

19. This paragraph is not used.

20. This paragraph is not used.

21. This paragraph is not used.

22.0 Investment Guarantee:

Should the Contractor make available for licensing a new release, version, modification or replacement ('Modification') to any Software program or module at any time within ten (10) day of cutover (for purposes of this paragraph, "cutover" shall mean the date the system is first made available for Acceptance), and such Modification is not part of warranty or technical support services Updates to be provided, the Contractor shall provide the Modification at no charge to the State provided that the additional fees for labor and for installation of such Modifications are or may be charged to the State at prevailing rates depending on the time of the day and day of the week.

23. This paragraph is not used.

24. This paragraph is not used.

25. This paragraph is not used.

SECTION D

GENERALLY APPLICABLE TERMS AND CONDITIONS

25.0 Duties of Contractor

The Contractor shall provide the following services relative to this contract:

The Contractor, in compliance with the terms and conditions herein agrees to provide the System(s) as defined in the RFP Response including any modifications capable of meeting or exceeding the requirements of the RFP Response including any modifications..

25.1.1 EQUIPMENT INSTALLATION AND USAGE:

26.1.1 Equipment Description and Condition

All purchased equipment is to be newly manufactured, (not remanufactured or refurbished).

26.1.2 Equipment Site Preparation

The Agency shall, at its own expense, prepare each site in accordance with the reasonable specifications set forth by the Contractor. The site preparation procedure and requirements shall be consistent with Appendix 4, Section 7.0. of the RFP. If the Contractor fails to inspect the site prior to delivery, the site shall be deemed approved for System installation, and all further site preparation responsibility shall be that of the Contractor. If Contractor agrees, the Agency may elect to have the Contractor provide electrical service associated with the telephone System being purchased and installed on State property to the TCs, ICs, and MCs under the provisions of the QPA. Contractor shall have the option not to provide electrical services, but if Contractor does elect to provide said electrical services at the request of the Agency, the pricing shall be at the then-current pricing as sub-contracted by Contractor. (Both parties agree that Contractor does not normally provide for electrical services.) Or the Agency may elect to provide electrical services at their own cost in accordance with the Contractor's Specification.

26.1.3 Installation

The Contractor shall be responsible for unpacking, uncrating, and installing the System, cleanup, and in all other respects making the System ready for operational use. The Contractor shall certify when completed that the System is ready for use and that all cabling is tested and certified in accordance with Appendix 4, Section 3.0.

26.1.4 Risk of Loss Prior to Installation

All risk of loss prior to delivery, shall be borne by the Contractor. Following System delivery and prior to Final System Acceptance, the risk of loss shall be shared by the Contractor and the State in proportion to the loss or damage attributable to the intentional and negligent act or omission of each party. Force Majeure events causing loss or damage to the System shall be borne by the State. Acts of third parties causing loss or damage to the System shall be borne by the State unless it can be shown that the Contractor's act or omission contributed to the loss or damage.

26.1.5 System Implementation Schedule

The installation dates of the System and the delivery dates set forth in Appendix 4, Section 10.0 and Exhibit B of the RFP (or as modified by the Notice to Proceed) have been fixed so that the utilization of the System is consistent with

the established Implementation Schedule. If any of the System components are not installed by the date specified, the delay will interfere with the Implementation Schedule resulting in significant loss and damage to the State. From the nature of the procurement, it would be impractical and extremely difficult to fix the actual damage sustained in the event of any such delay.

The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amount set forth in this paragraph, and they agree that in the event of any such delay, Contractor shall pay such amount as liquidated damages and not as a penalty. The State, at its option for amounts due the State as liquidated damages, may deduct such from any money payable to Contractor pursuant to the Contract, or may bill Contractor as a separate item. The amount of damages as it pertains to Contractor delays shall be the amount indicated below for each calendar day of delay in installation, but not for more than thirty (30) calendar days:

- ½% of the QPA Release amount, per working day.

If the delay is more than thirty (30) calendar days, then by written notice to Contractor, the State may terminate the right of Contractor to install, and may obtain substitute equipment. In this event, Contractor shall be liable for liquidated damages, in the amounts specified above until substitute equipment is installed, ready for use, or for thirty (30) days from the installation date, whichever occurs first.

26.1.6 System Enhancements

26.1.6.1 The State may, at its sole discretion, upgrade, add to, or enhance System hardware or components with hardware or components of the same manufacturer but provided by another vendor/distributor as long as the alternate provider is authorized and/or certified by the manufacturer to sell and/or service the System, however, the warranty service provided by Contractor is null and void. If the System is subject to Lease-to-Purchase, the State agrees that any addition, alteration, improvement or attachment will not subject the System to any lien or security interest in favor of any other party.

26.1.6.2 The State, without prior approval of the Contractor, may connect the equipment herein contracted for to any equipment manufactured or supplied by other Contractors.

26.1.6.3 When such upgrades, additions, enhancements, or intersystem connections are made by the State or its Contractors or authorized agents: (A) The State shall be responsible for damage to the System caused by or resulting directly or indirectly from such upgrades, additions, enhancements or intersystem connections; (B) Contractor shall not be held responsible for defects in software provided such defects are caused by or result directly or indirectly from such alterations or attachments; (C) Contractor will not be liable for any performance degradation of the System caused by or resulting directly or indirectly from such alterations or attachments; (D) Contractor will not be responsible for the proper or efficient operation of, or the cost or effort to modify, any software affected directly or indirectly by such alterations or attachments; (E) Contractor will not be responsible for warranty of the alterations or attachments; (F) Contractor shall not be responsible for any injury to persons or damage to property, real or personal, caused by or resulting directly or indirectly from such alterations or attachments (G) Contractor shall not be responsible for any damages of any kind (direct, indirect, consequential, special or

incidental) resulting directly or indirectly from such alterations or attachments..

26.2 Subcontracting

- 26.2.1 Contractor must obtain the approval of the IDOA before subcontracting any portion of this Contract. This limitation shall not apply to the purchase of standard commercial supplies or raw materials.
- 26.2.2 The Contractor will be responsible for Contract performance, compliance with terms and conditions of the Contract and the requirements of Federal and State equal opportunity and affirmative action statutes, rules and regulations in all subcontracts, if subcontractors are used.
- 26.2.3 The Contractor shall submit a written request to the State and receive written approval from the State whenever new subcontractors are to be utilized to complete any portion of this Contract.

27.0 This paragraph is not used.

28.0 Access to Records

The Contractor and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred (hereinafter "Records") and shall make such materials available at their respective offices during regular business hours during the Contract period and for three (3) years from the date of final payment under the Contract, for inspection by the State, at State's sole expense, or, also at State's sole expense, by any other authorized representative of the State Government (and such inspection shall not unreasonably interfere with Contractor's business activities) and copies thereof shall be furnished to the State, at State's sole expense, if requested. The State must provide Contractor with at least thirty (30) days prior written notice for request for inspection of Contractor's Records or to be furnished with copies thereof. The State acknowledges that Contractor's Records may be confidential information and shall be subject to the provisions of Section 39 hereunder, and, if applicable, a separate non-disclosure agreement. The parties acknowledge that Contractor's Records shall not constitute any contents, attachment or referenced document of this Contract, and therefore is not subject any inspection of, or disclosure to, any party under the Indiana Public Records Act, IC 5-14-3-1 et. Seq.

29.0 Assignment

Except to Contractor's parent company or a wholly owned subsidiary of Contractor's parent company, the Contractor shall not assign or subcontract the whole or any part of this contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this contract and shall not be made to more than one party.

30.0 This paragraph is not used.

31.0 This paragraph is not used.

32.0 Authority to Bind Contractor

Notwithstanding anything in the contract to the contrary, the signatory for the contractor represents that he/she has been duly authorized to execute contracts on behalf of the contractor designated above, has filed proof of such authority with the Indiana Department of Administration, 402 West Washington Street, W469, Indianapolis, Indiana 46204, and has obtained all necessary or applicable approval from the home office of the contractor to make this,

the attached contract, fully binding upon the contractor when his / her signature is affixed and is not subject to home office acceptance hereto and accepted by the State of Indiana.

33.0 Changes in Work

In the event the State requires a major change in scope, character or complexity of the work after the work has progressed, adjustments in compensation to the Contractor shall be determined by the State in the exercise of its honest and reasonable judgment. The Contractor shall not commence any additional work or the change of the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all Contractor and State signatories hereto.

33.1 All changes to this Contract shall be by formal amendment of this Contract signed by all parties required by Indiana law to affix their signatures thereto and approved by the State if the change(s) affects the cost and/or scope of the performance.

33.2 The parties may, however, mutually agree in writing to make modifications to performance, (e.g. engineering, design, systems components, or other changes) under a given QPA Release. The only State approvals required for such non-material changes are the affected agency's and DOIT/IDOA.

33.3 Replacement or substituted system components may be permitted during the term of the QPA, but only if the replacement or substituted component meets or exceeds the RFP specifications of the original component, the State has reviewed and approved the replacement or substituted component, and the price for the replacement or substituted component is the same or less than the item it replaced. The State retains the sole discretion to determine if a system component may be replaced or substituted. This shall be deemed a non-material change if permitted.

33.4 **EXPEDITE CHARGES:** The State reserves the right to request delivery and installation of the offered system in prior to the normal cut-over dates. The Contractor has the right to charge the State an expedite charge of up to ½% of the QPA Release amount, per working day not to exceed 3% of the total QPA Release amount.

33.5 **RESTOCKING CHARGES:** The State reserves the right to cancel a QPA Release upon written notice no later than ten (10) days after the confirmed order to the Manufacturer. The Contractor will have the right to charge the State up to 15% of the QPA Release amount as a restocking charge. After delivery, the QPA Release may not be canceled.

34.0 This paragraph is not used.

35.0 Compliance with Laws

The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this contract shall be reviewed by the State and the Contractor to determine whether the provisions of the contract require formal modification.

36.0 Conflict of Interest

36.1 As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party" means:

36.1.1 The individual executing this Contract;

36.1.2 An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or

- 36.1.3 Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- 36.2 The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.
- 36.3 The Department will not exercise its right of cancellation under section B above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this contract and the employment by the State of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Contract consistent with an opinion of the Commission obtained under this section.
- 36.4 Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

37.0 Confidentiality of Data, Property Rights in Products, and Copyright Prohibition

The Contractor further agrees that all information, data, findings, recommendations, proposals, etc. -- by whatever name described and by whatever form therein secured, developed, written or produced by the Contractor specifically for the State in furtherance of this contract -- shall be the property of the State. The Contractor shall take such action as is necessary under law to preserve such property rights in and of the State while such property is within the control and/or custody of the Contractor. By this contract the Contractor specifically waives and/or releases to the State any cognizable property right of the Contractor to copyright, license, patent or otherwise use such information, data, findings, recommendations, proposals, etc that are developed specifically for the State under this Contract.

38.0 Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the State.

39.0 Continuity of Services

- 39.1 The Contractor recognizes that the services under this contract are vital to the State and must be continued without interruption and that, upon contract expiration, a successor, either the State or another Contractor, may continue them. The Contractor agrees to:
- 39.1.1 Furnish phase-in training and,
- 39.1.2 Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- 39.2 The Contractor shall, upon the State's written notice:
- 39.2.1 Furnish phase-in, phase-out services for up to sixty (60) days after this contract expires, and
- 39.2.2 Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.
- The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be

subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

- 39.3 The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract.
- 39.4 The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and profit not to exceed a prorated portion of profit under this contract.

40.0 Contract Confidentiality of State/Contractor Information

Each party understands and agrees that, during the time of its performance for the other party, it may be necessary to disclose concepts, data, materials and information to other party that may contain confidential and protected data; therefore, the receiving party promises and assures that concepts, data, materials, and information gathered, based upon or disclosed to the receiving party for the purpose of this Contract will not be disclosed to others or discussed with other parties without the prior written consent of the disclosing party. Each party further agrees to have any of its employees, agents, or representatives, who may be required to work with such concepts, data, materials, and information in the performance of its work for the other party, to comply individually with confidentiality standards, including (upon written request) commercially reasonable personal screening of its personnel by the other party for security purposes, but subject to any State rules or policies regarding personnel, including but not limited to any State Personnel Department or union policies. The provisions of the Section 38 shall survive termination of this Contract. Notwithstanding the foregoing, this Contract is subject to the Indiana Public Records Act, IC 5-14-3-1 et. seq. Contractor understands and expressly agrees that the entire contents of this Contract, including pricing or any attachment or referenced document, is subject to the inspection of and disclosure to any party, including copying, without any limitation whatsoever.

41.0 Contractor Marketing

Contractor, or any subcontractor or any other organization hired by Contractor or currently under contract with Contractor shall not refer to the existence of this Contract in any advertising, brochures or other written marketing materials distributed to third parties, current customers or prospective customers without first obtaining the prior written consent of the State, which shall not be unreasonably withheld.

42.0 Counterparts

This Contract may be executed simultaneously in two counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

43.0 Customer Responsibilities

The parties acknowledge that Contractor requires the following in order to perform its obligations under this Contract: reasonably necessary access to the System during mutually agreed times (Waiver of liability and other restrictions will not be imposed as a requirement for access to the State Premises). In order to perform Support, the State will allow Contractor to use only those machines, communications, facilities, features, and other equipment at no charge that are necessary to install, test, and troubleshoot the System. A designated representative of the State will be available on the Premises during the performance of Installation and Support. The State will maintain the conditions of the Premises within the common environmental range and in accordance with the power, temperature, humidity, and other requirements for the System. The State will coordinate with Contractor the planning and selection of reasonably timely access to the

necessary quantity, and types, and providers of telephone access circuits. The State will order such circuits and arrange for their, wiring and interconnection at a demarcation point satisfactory to Contractor allowing for the provision of services and functioning of the System;. The State will assure that the Installation Date will not be delayed due to non-availability of such circuits. The State will use commercially reasonable efforts (and shall accede to having the installation schedule delayed if it fails to use such commercially reasonable efforts) to assure that the supplier(s) of such circuits provide one or more test circuits from each group of circuits during installation of the System; Contractor will assist the State in the initial testing of new circuits. The State will provide at its expense one telephone access line for remote warranty maintenance of the System; and one general-purpose telephone set at or near the demarcation point for the purpose of testing and for business use by Contractor support personnel (long distance charges shall be chargeable to Contractor). The State will maintain one or more Contractor-trained State employees or contractors to act in the capacity of System Manager. The System Manager's responsibilities shall include, but shall not be limited to, completion of the designated training, and active participation throughout the implementation process in the development, entry, testing and modification of all appropriate database elements, call routing scenarios, IVR scripts and desktop/CTI applications as applicable. Additional customer representative(s) shall be designated to receive "train-the-trainer" training from the Contractor and to deliver actual "agent" training classes throughout the implementation process.

44.0 Default by State

If the State, after sixty (60) days written notice, fails to correct or cure any breach of this Contract, then the Contractor may cancel and terminate this Contract and collect monies due up to and including the date of termination. If the Contractor fails to correct or cure a material breach as set forth in this Agreement within the specified date of termination provided in the Termination Notice referenced in this Agreement then the State may cancel and terminate this Contract and Contractor can collect all monies due up to and including the date of termination.

45.0 Disputes

Should any disputes arise with respect to this contract, Contractor and the State agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of said dispute then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this contract will not be cause for Contractor to terminate this

contract, and the Contractor may bring suit to collect without following the disputes procedure contained herein.

46.0 Maintaining a Drug Free-Workplace:

Contractor hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Contract a drug-free workplace, and that it will give written notice to the State within ten (10) days after receiving actual notice that an employee of Contractor has been convicted of a criminal drug violation occurring in Contractor's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with the Contractor for up to three (3) years.

In addition to the requirements of the above paragraphs, if the total Contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (c)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (c)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

47.0 This paragraph is not used.

48.0 Entire Agreement

Both parties acknowledge that they have read this Contract, that it, and all of its Schedules referenced herein, constitute the complete and exclusive statement of the Contract between the parties, and that it supersedes any terms and conditions set forth in any and all current and future requisitions, purchase orders, order schedules, QPA releases, acceptance forms, invoices or any other documents not incorporated by reference hereto, in addition to all prior proposals and understandings, oral or written, relating to the subject matter of this Contract, except for Schedules

set forth in this Agreement hereunder. This Contract may not be modified or amended except by a written instrument directly referenced hereto signed by a duly authorized representative of each party; no other act, document, usage, or custom will be deemed to amend or modify this Contract.

49.0 Faithful Performance Bond

- 49.1** The Contractor agrees to furnish to the Indiana Department of Administration a Performance Bond in the amount of \$1,000,000. The Performance Bond must be delivered to the State concurrent with the Contractor's execution of this Contract. The Performance Bond may be in the form of a cashier's check, a certified check, or a surety bond. If a surety bond is executed, the surety company must be authorized to do business in the State of Indiana as approved by the Indiana Department of Insurance. The Performance Bond shall be made payable to the Indiana Department of Administration and shall be effective throughout the life of the Contract including any extension of the Contract term.
- 49.2** Any change in work, extension of time, or termination of this Contract (except in the case of default by the State), if any, made pursuant to this Contract, shall in no way release the Contractor or any of its sureties from any of their obligations, except as expressly set forth by mutual written agreement between the parties. Such bond shall contain a waiver of notice of any change to this Contract.
- 49.3** Notwithstanding any other provisions relating to the beginning of the term, this Contract will not become effective until the Performance Bond required by this Contract is delivered in the correct form and amount to:

Attn: David Hanna
Indiana Department of Administration
Procurement Division
Room W468, Indiana Government Center South
402 W Washington Street
Indianapolis, IN 46204-2263

50.0 Force Majeure

In the event that either party is unable to perform any of its obligations under this contract -- or to enjoy any of its benefits -- because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.

51.0 Foreign Corporations

Pursuant to IC 4-13.4-6-6 foreign (non-Indiana) corporations must obtain a certificate of authority from the Indiana Secretary of State to transact business. Contractor represents and assures that it has complied with the mandates of IC 4-13.4-6-6 upon execution of the Contract. The Contractor should contact the Secretary of State, Corporation Division, Room 155, State House, Indianapolis, Indiana 46204 to obtain the necessary registration materials.

52.0 Guaranteed Most Favorable Terms

All of the prices, terms, warranties and benefits granted by Contractor herein are comparable to or better than those offered by Contractor to other non educational State and Local Government customers contracting under the same material terms and conditions, quantities, configurations and location composition. As used herein, material terms and conditions include those terms related to price or quality or in some manner affecting price.

If Contractor shall, prior to the execution of this Contract or installation of the equipment procured under this Contract, announce a general price reduction or make generally available to other State and Local Government customers more favorable terms or conditions with respect to this equipment, such prices, terms and conditions will be available to the State upon the date the general price reduction or change in terms and conditions becomes effective.

53.0 **Governing Laws**

This contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

54.0 **Included Documents and Conflicts**

This Contract and the following documents which are attached hereto and incorporated by reference, are listed in descending order of their preference in the event of a conflict:

54.3 The Request for Clarification of Proposal and Contractor's Response to the Request for Clarification of Proposal and Contractor's Response to Telephone Questions 52.4
The RFP, except where exception was taken in the Proposal;

54.5 The Proposal

54.6 The Project Milestones and Payment Schedule, ;

54.7 "Price Catalog

54.8 The Equipment Inventory,

55.0 **Indemnification**

Contractor agrees to indemnify, defend and hold harmless the Lessor, the State, its agents, officers and employees from all claims and suits including court costs, loss, liability, attorney's fees, and other expenses caused by any wrongful act or omission (including negligence) of Contractor that directly results in bodily injury (including death) or direct damages to tangible property, provided that Contractor shall have sole control of any such action or settlement negotiations, and provided further that the State notifies the Contractor promptly in writing of such claim or suit and gives the Contractor adequate information and assistance in the settlement and/or defense of any such action, at Contractor's expense. The State shall not provide such indemnification to the Contract.

Contractor will indemnify, defend and hold harmless, or settle, at its expense any action brought against the State to the extent based upon a claim that the System, Proprietary Hardware or Software purchased or licensed and paid for by the State infringes any duly issued United States patent, copyright, trademark, trade secret or any other intellectual property right (hereinafter "Intellectual Property Right") and Contractor shall pay any settlements entered into or final judgments awarded to the extent based thereon; provided that Contractor shall have sole control of any such action or settlement negotiations, and provided further that the State provides commercially reasonable and timely notice of such claim to the Contractor and makes commercially reasonable efforts to provide information, and to assist (at Contractor's expense) in the settlement and/or defense of any such action. If the State's System, Proprietary Hardware or Software becomes, or in Contractor's opinion may become, subject to any claim of infringement of any Intellectual Property Right, Contractor at its option may: (i) procure for the State the right to continue to use the System, Proprietary Hardware or Software; (ii) replace or modify the System, Proprietary Hardware or Software so that it is non-infringing, provided that such replacement or modification retains the functionality and compatibility of the original; or (iii) if neither of the foregoing alternatives is reasonably practical, Contractor may remove the System, Proprietary Hardware or Software and refund the applicable Purchase Price made to Contractor, reduced by an amount equal to the depreciated portion of the payments, calculated on a five (5) year straight line basis. Contractor shall not be liable for any costs or expenses incurred by the State or on the State's behalf without prior written authorization by an officer of Contractor, which authorization shall not be unreasonably delayed or withheld. Contractor specifically disclaims any liability for claims to the extent relating to non-Contractor systems, equipment, software, assemblies, circuits,

methods or processes into which the System, Proprietary Hardware or Software provided by Contractor is incorporated, or for or with which any of the System, Proprietary Hardware or Software provided by Contractor is used. Contractor specifically disclaims any liability under this Section 31(b) to the extent it relates to the creation or modification of the System, Proprietary Hardware or Software in compliance with the State's specifications or for the State's modification of the System, Proprietary Hardware or Software unless such modification was made with Contractor's prior written approval. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF CONTRACTOR AND THE EXCLUSIVE REMEDY OF THE STATE FOR INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY THIRD PARTY PATENT, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT RELATING TO THE SYSTEM, PROPRIETARY HARDWARE OR SOFTWARE.

56.0 Independent Contractor

Both parties hereto, in the performance of this contract, will be acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and worker's compensation insurance for the Contractor's employees.

57.0 Insurance

The Contractor understands and agrees that the State is self-insured and will not maintain private or any other insurance concerning this Contract.

58.0 This paragraph is not used.

59.0 Limitation of Liability for Damages

59.1 IN NO EVENT SHALL CONTRACTOR'S OR THE STATE'S LIABILITY ARISING OUT OF OR RELATING TO THIS CONTRACT EXCEED THE AGGREGATE AMOUNT PAID TO CONTRACTOR BY THE STATE FOR THE SYSTEM, PROPRIETARY HARDWARE, SOFTWARE, AND SERVICES UNDER THIS CONTRACT, OR ONE (1) MILLION DOLLARS, WHICHEVER IS GREATER (BUT WITH RESPECT TO CONTRACTOR'S LIABILITY, LESS ANY AND ALL REFUNDS MADE BY CONTRACTOR TO THE STATE) AND IS LIMITED TO DIRECT DAMAGES. IN NO EVENT WILL CONTRACTOR OR THE STATE BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOSS OF USE, OR LOSS OF DATA, OR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE. THESE LIMITATIONS SHALL APPLY WHETHER OR NOT THE PARTY AGAINST WHOM A CLAIM IS MADE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

59.2 NOTWITHSTANDING ANY LANGUAGE IN THIS AGREEMENT, CONTRACTOR'S LIMITATION FOR ANY LIQUIDATED DAMAGES, AND/OR OTHER TYPES OF RIGHT-TO-COVER/EXCESS COSTS AGREED TO IN THIS CONTRACT (OTHER THAN DIRECT DAMAGES AS STATED ABOVE) SHALL BE A MAXIMUM OF AN AGGREGATE OF FIFTEEN PERCENT (15%) OF THE TOTAL AMOUNT PAID TO CONTRACTOR FOR SYSTEMS PURCHASED UNDER THIS CONTRACT FOR ALL INCIDENTS UNDER THIS CONTRACT THROUGHOUT THE TERM OF THIS CONTRACT. (THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LIQUIDATED DAMAGES THAT MAY BE SPECIFIED IN PARAGRAPH 25.)

60.0 Multi-Term Funding Cancellation

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this contract, this contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

61.0 Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the contractor employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The State of Indiana shall comply with Section 202 or Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of contract.

62.0 Notice to Parties

Whenever any notice, statement or other communication shall be sent to the State or Contractor, it shall be sent to the following address, unless otherwise specifically advised.

62.1 Notices to the State shall be sent to:

All invoices will be sent to the contact and address listed on the purchase order. All other communications shall be sent to either Steve Reed or Kye Waltermire at the following address:

State of Indiana
IDOA/DOIT
100 N. Senate Ave., Rm. N551
Indianapolis, IN 46204

62.2 Notices to the Contractor / Grantee shall be sent to:

SBC Global Services	and	SBC Global Services
Attention: Amy Ziegert, Sales Manager		Attention: Director of Contracts
240 N. Meridian St., Rm. 1111		225 W. Randolph Street, Suite 9C
Indianapolis, IN 46204		Chicago, IL 60606

62.3 Payments to the Lessor shall be sent to:
Ameritech

PO Box 1838

Saginaw, MI 48605-1838

63.0 This paragraph is not used.

64.0 This paragraph is not used.

65.0 Ownership of Documents and Materials

All documents, records, programs, data, film, tape, articles, memos, and other materials developed specifically for the State under this contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such matters will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this contract shall be available to the State.

66.0 This paragraph is not used.

67.0 Penalties / Interest / Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest (other than interest with respect to Lease-to Purchase payments), or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 et seq., IC 34-2-22-1 et seq., and IC 34-4-16-1.1 et seq.

68.0 Progress Reports

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress report shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

69.0 This paragraph is not used.

70.0 This paragraph is not used.

71.0 Severability

The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.

72.0 Substantial Performance

This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

73.0 Successors and Assignees

The Contractor binds his successors, executors, administrators, and assignees to all covenants of this contract. Except as above set forth, the Contractor shall not assign, sublet or transfer interest in this contract without the prior written consent of the State of Indiana.

74.0 Taxes

The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the contractor as a result of this contract.

75.0 Termination for Convenience

This contract may be terminated between the Contractor and the State, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be affected by delivery to the contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under which such termination becomes effective. The Contractor shall be compensated for services rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination, unless the State requests services to be performed. The Contractor shall be compensated for services herein provided but in no case shall total payment made to contractor exceed the original contract price due on contract or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

76.0 Termination for Default

76.1 With the provision of thirty (30) days notice to the Contractor, the State may terminate this contract in whole or in part, if the Contractor fails to:

76.1.1 Correct or cure any breach of this contract;

76.1.2 Deliver the supplies or perform the services within the time specified in this contract or any extension;

76.1.3 Make progress so as to endanger performance of this contract; or

76.1.4 Perform any of the other provisions of this contract.

76.2 If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any reasonable excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

76.3 The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

76.4 The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

77.0 Termination

77.1 The State may terminate and cancel this Contract without prejudice to any rights or cause of action the State may have against the Contractor, if the Contractor is adjudged bankrupt; or the Contractor makes a general assignment for the benefit of creditors; or a receiver is appointed due to the Contractor's insolvency; or a court of competent jurisdiction finds that the Contractor persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction. Contractor shall be paid all charges due up to and including the date of termination for services and goods accepted, subject to any and all defenses and counterclaims.

- 77.2 The State, in addition to other rights set forth elsewhere in the Contract, may terminate the whole or any part of this Contract at any time if the State determines that the Contractor has failed to make satisfactory progress toward performance. In such a case, the State will transmit a Termination Notice of the default of the Contractor by certified mail, return receipt requested, at least ten (10) days prior to termination date, and the Contract shall be terminated effective on the date specified in the State's notice. The Contractor shall have the right to cure as provided in this Agreement. The Contractor shall continue Contract performance to the extent not terminated under the provision of the above paragraph and shall be compensated for his performance pursuant to the rates set forth herein. In the event that the State terminates the Contract, in whole or in part as provided in this Section, the State may procure, upon such terms and in such manner as it may deem appropriate, services similar to those so terminated, and the Contractor shall be liable to the State for any reasonable excess costs for such similar services. The rights and remedies of the State provided herein shall not be exclusive and are in addition to any other rights and remedies and limitations provided by law or under this Contract. Contractor shall be paid all charges and fees due, in whole or in part, up to and including the date of termination, for services and goods accepted, subject to any and all defenses and counterclaims.
- 77.3 The Contractor, in addition to other rights set forth elsewhere in the Contract, may terminate the whole or part of this Contract upon transmission of a Termination Notice of the default by the State from Contractor to the State by certified mail, return receipt, at least ten (10) calendar days prior to the termination date, upon non-payment by the State to the Contractor of one or more invoices not in dispute, or other material breach by the State hereunder. The Contract shall be terminated effective on the date specified in the Contractor's notice. The State shall have the right to cure as provided by this Agreement.

78.0 Waiver of Rights

No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

79.0 This paragraph is not used.

80.0 Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he is the contracting party, or that he is the representative, agent, member or officer of the contracting party, that he has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, to the best of his knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

81.0 This paragraph is not used.

82.0 Work Standards

The Contractor agrees that it will, in providing installation, training and warranty services under this Contract, execute its respective responsibilities by following and applying at all times the highest degree of expertise and skill common among members of the computer profession, and in addition, understands that the State has relied on the Contractor's expertise and skill with regard to these services. If the State becomes dissatisfied with the work product or the working relationship with the individuals assigned to work on this Contract, the Contractor will entertain the request and have the opportunity to correct such deficiency or make reasonable efforts to resolve the dissatisfaction.

83.0 Safe Work Environment.

(a) State shall provide a safe work environment for Contractor's personnel. State's obligations include: (i) notifying Contractor prior to commencement of any work under this Agreement of any known environmental hazards on State's property or at the work site, including the presence of friable asbestos; (ii) removing or abating, at its expense, risk posed by such environmental hazards on State's property or at the work site; and (iii) adopting, at its expense, any other work site safety measures required by law or deemed reasonably necessary by Contractor.

(b) Contractor shall have the right to suspend performance immediately where the State fails to comply with this provision. State shall pay any costs incurred as a result of this suspension of performance. Contractor may terminate this Agreement when any such suspension lasts longer than thirty (30) days.

84.0 Lease-to-Purchase of System

84.1 Ameritech Credit Corporation (herein referred to as the 'Lessor') will provide lease-to-purchase offerings under this QPA in the manner described in the RFP and as responded to in the Contractor's Proposal thereto. The specific terms of each offering shall be defined under a requesting agency's particular QPAR. This Article of the QPA shall serve to identify the specific terms and conditions pertinent to the lease-to-purchase option.

84.2 The Term of the lease-to-purchase QPAR's shall be either 24, 36 or 48 months as designated in the QPAR by the requesting agency. The Term shall not commence until Lessor has received the Final System Acceptance (FSA) form from the requesting agency.

84.3 The Contractor shall remain fully responsible and directly liable to the State for all Systems and services provided by the Lessor under any QPAR.

84.4 The State and the requesting agency represents, covenants and warrants that: (i) it is a State or a fully constituted political subdivision or agency of the state of Indiana; (ii) the interest portion of the Lease Payments shall be excluded from the requesting agency's gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as it may be amended from time to time (the "Code"); (iii) the execution, delivery and performance by the requesting agency of a QPAR selecting the lease-to-purchase option shall be duly authorized by all necessary action on the part of the requesting agency; (iv) this QPA and the specific QPAR encumbered thereunder will constitute a legal, valid and binding obligation of the requesting agency enforceable in accordance with its terms; (v) the requesting agency will comply with the information reporting requirements of Section 149 (e) of the Code, as the same may be amended from time to time and such compliance shall include but not be limited to the execution of information statements requested by Lessor; (vi) the requesting agency will not do or cause to be done any act which will cause, or by omission of any act allow, the lease-to-purchase obligation to be an arbitrage bond within the meaning of Section 148 (a) of the Code; (vii) the requesting agency will not do or cause to be done any act which will cause, or by omission of any act allow, the lease-to-purchase obligation to be a private activity bond within the meaning of Section 141 (a) of the Code; (viii) the requesting agency will not do or cause to be done any act which will cause, or by omission of any act allow, the interest portion of the lease-to-purchase payments to be or become includible in gross income for Federal income taxation purposes under the Code; (ix) the requesting agency will be the only entity to own, use and operate the equipment during the Term except that the requesting agency may transfer the equipment to another state of Indiana governmental entity for use, and will promptly notify Lessor of such transfer and (x) the System shall be kept free and clear of all levies, liens and encumbrances except those created under this Lease-to-Purchase. The requesting agency agrees that (i) it will do or cause to be done all things necessary to preserve and keep the lease-to-purchase obligation in full force and effect, (ii) it has complied with all bidding requirements where necessary and by due notification presented the QPAR for approval and adoption as a valid obligation on its part.

84.5 Upon payment of the final monthly amount due under the requesting agency's lease-to-purchase QPAR, Title to the System will vest in the requesting agency; Prior to the requesting agency making the final monthly payment for the System, Title shall remain with the Lessor. In order to secure all of its obligations hereunder, the requesting agency (i) grants to Lessor a first and prior security interest in any and all right, title and interest of the requesting agency in the System, and (ii) agrees to execute and deliver all financing statements, certificates of title and other instruments reasonably necessary or appropriate to evidence such security interest. Lessee hereby irrevocably appoints Lessor, its agents, successors or assigns, its true and lawful attorney-in-fact for the limited purpose of executing and filing, on behalf of Lessee, any and all UCC Financing Statements, which in Lessor's sole discretion, are necessary or proper to secure Lessor's interest in the equipment in all applicable jurisdictions. Attached are copies of all such documents reasonably required at the time of executing the QPA to evidence a like security interest.

84.6 The requesting agency shall use the System with reasonable care in the manner contemplated by the manufacturer for the System and shall comply with all laws, ordinances, and regulations relating thereto. The Contractor shall be fully responsible and liable for maintaining the System for the entire term of the lease-to-purchase QPAR as those services are fully described in the RFP and the Proposal thereto.

84.7 The requesting agency assumes all risk of loss of or damage to the Equipment from any cause except for any Contractor or Lessor negligent or intentional act or omission thereto, following Final System Acceptance thereof shall relieve the requesting agency of the obligation to make Lease Payments or to perform any other obligation hereunder. In the event of damage to any item of Equipment, the requesting agency will immediately place the same in good repair. The Contractor and Lessor acknowledge that the requesting agency and the State is uninsured. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, the requesting agency at the option of Lessor will: either (a) replace the same with like equipment in good repair; or (b) on the next Lease Payment date, pay Lessor: (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease Payment due on such date; and (ii) an amount equal to all remaining Lease Payments to be paid during the Lease Term as set forth in the Ameritech Schedule of Payments document (identified also as Schedule B and attached hereto and incorporated by reference).

84.8 Upon thirty (30) days prior written notice from the State to the Lessor, and provided that there is no default then existing, the State shall have the right to purchase the System on any given monthly payment date by paying to System, on such date, the monthly payment then due together with the Concluding Payment amount set forth opposite such date. Upon satisfaction by the requesting agency of such purchase conditions, the Lessor will transfer any and all of its rights, title and interest in the System to the requesting agency as is, without warranty, express or implied, except that the System shall be free and clear of any liens created by Lessor.

84.9 The requesting agency will execute or provide, as reasonably requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by a lease-to-purchase QPAR.

84.10 With respect to a Lease-to-Purchase, any of the following shall constitute an Event of Default: (a) failure by State or requesting agency to pay any lease payment for a period of ten (10) days or more after State's receipt of written notice thereof in the form of an invoice indicating that the amount is past due; (b) failure by State or requesting agency to perform any other term or condition in any Lease-to-Purchase or any other agreement with Lessor, and such failure continues uncured for twenty (20) days after State's receipt of written notice thereof; or (c) the inaccuracy of any material representation or warranty made by the State or requesting agency in connection with

any Lease-to-Purchase, which failure or inaccuracy shall continue for a period of twenty (20) days or more.

84.11 If an Event of Default has occurred, Lessor may, at its option, exercise one or more of the following remedies: (a) terminate and/or declare an Event of Default under any Lease-to-Purchase or other agreement with State and/or requesting agency; (b) recover from State and/or requesting agency all lease payments then due and unpaid; (c) demand that State and/or requesting agency return the System to Lessor; and (d) take possession of the System wherever located, with demand or notice. No right or remedy is exclusive of any other provided herein, but shall be cumulative and shall be in addition to all other rights and remedies in its favor existing in law, in equity or in bankruptcy.

85.0 Maintenance Contracts are removed from the contract by agreement of the State and the Contractor.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

Contractor:By: Charles E. GreenPrinted Name: CHARLES E. GREENTitle: DIRECTORDate: 6-6-2001

(Where Applicable)

Attested By: _____

Division of Information Technology:By: Laura J. LarimerPrinted Name: Laura J. LarimerTitle: DirectorDate: 6/12/01

If a DPOC signature is necessary but the signature block is left blank, a statement must be inserted that authority has been delegated to this agency per a letter from DPOC dated ***

Data Processing Oversight CommissionBy: WM PiercePrinted Name: WM PierceTitle: Systems ConsultantDate: 15-Jun-2001**Department of Administration**
Glenn R. Lawrence
 Commissioner
Date: Jun 24 2001**State Budget Agency**
Betty Cockrum for
 Director
Date: 7/17/2001**Office of the Attorney General**
Susan W. Gaud for
 Stephen Carter

Attorney General

Date: 8-6-01



EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R6 / 9-02)

Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Check EDS against contract data for consistency.
6. Attach additional pages if necessary.

1. EDS Number: C52-2-204

2. Date prepared: 5/12/2003

3. CONTRACTS & LEASES

☐ Professional/Personal Services
☐ Grant
☐ Lease
☐ Attorney
☐ MOU
☒ QPA
☐ Equipment Lease
☐ Lease-to-Own

☐ Contract for Services
☐ Maintenance
☐ License Agreement
☒ Amendment # 1
☐ Renewal #
☐ Other (specify)

FISCAL INFORMATION

4. Account Number:
5220/ /106500

5. Account Name: DP Rotary

6. Total amount this action:

\$2,000,000.00

7. New contract total:

\$2,000,000.00

8. Revenue generated this action:

9. Revenue generated total contract:

10. New total amount for each fiscal year:

Year \$ Year \$

Year \$ Year \$

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year):
July 1, 2003

12. To (month, day, year):
June 30, 2005

13. Method of source selection:

☐ Negotiated ☒ RFP # C52-0-006
☐ Bid/Quotation ☐ Emergency ☐ Special Procurement
☐ Other (specify)

34. Statutory Authority (Cite applicable Indiana or Federal Codes): Indiana Code 5-22-6-1 et seq.

35. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)
This amendment is for the modification of QPA catalog items. The previous part numbers have been discontinued and the new numbers need to be added to the QPA. The new numbers are attached. The cost to the State has remained the same for the new part numbers.

36. Justification of vendor selection and determination of price reasonableness:

37. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

102519

SIGNATURES

38. Agency fiscal officer or representative approval

39. Date Approved

40. Budget agency approval

41. Date Approved

42. Attorney General's Office approval

43. Date Approved

44. Agency representative receiving from AG

45. Date Approved

AGENCY INFORMATION

14. Name of agency: IDOA/DOIT

15. Requisition Number:
C52-3-204

16. Address: 100 N. Senate Ave.
IGCN - N551
Indianapolis, IN 46204

AGENCY CONTACT INFORMATION

17. Name: G. Douglas Seidman

18. Telephone #:
(317) 232-3175

19. E-mail address: dseidman@doit.state.in.us

COURIER INFORMATION

20. Name: Jane E. Vehling

21. Telephone #:
(317) 232-0886

22. E-mail address: jvehling@doit.state.in.us

VENDOR INFORMATION

23. Taxpayer Identification Number: 363264367

24. Name: Business Communications (SBC)

25. Telephone #:
317-488-3083

26. Address: 240 North Meridian Street, Rm 1111
Indianapolis, IN 46204

27. E-mail address:

28. Is the vendor registered with the Secretary of State (all of State Corporations, must be registered) ☒ Yes ☐ No

29. Minority participation?
☐ Yes ☐ No

If no, and contract > \$25,000.00, you must include justification in box 34

30. If yes, list percentage:

%

31. Is there Renewal Language in the document?

YES

NO

32. Is there a "Termination for Convenience" clause in the document?

YES

NO

33. Will the attached document involve data processing or telecommunications systems(s)? ☒ Yes: ITOC or Delegate has signed off on contract
☐ Possibly: This issue has been discussed with ITOC Delegate

OAG CONTRACTS

REVIEWED BY
PEN PRODUCTS
BY

JUN 09 2003

ENTERED JUN 13 2003